POLIS DIRAJA MALAYSIA

v.

AUDREY KEONG MEI CHENG

HIGH COURT, KUALA LUMPUR
DATO' SYED AHMAD IDID J.
[CRIMINAL APPEAL NO. 44-16-94]
15 JULY 1994

CRIMINAL PROCEDURE: Arrest - Legality - Respondent not informed of reason for arrest - Whether fatal - Whether general nature of offence known to respondent - Federal Constitution art. 3.

CRIMINAL PROCEDURE: Arrest - Seizable offence - Arrest effected by Police Corporal without warrant - Whether legal - Sections 108, 109, 110 CPC.

CRIMINAL PROCEDURE: Police investigation - Diary - Nature of entries to be entered therein - Section 119 CPC - Application for detention of suspect under s. 117 CPC - Whether incumbent on police to produce diary to Court - Whether non-production of diary thereof fatal.

This was an application by the applicant for a revision of the order made by the Registrar of the Magistrate's Courts releasing the respondent from police custody on the ground that the latter had been unlawfully arrested and detained by the police. The respondent herein was arrested on 11 May 1994 at about 10.20 a.m within the Kuala Lumpur Court precincts. The facts showed that at the time of her arrest, which was effected by a woman police Corporal without a warrant, the police had neither suspected nor entertained any thought that the respondent was involved in the commission of any offence or crime and consequently no reason for her arrest was conveyed to the respondent at the time of arrest. Apparently, at the material time, the arrest was effected because the respondent, whose husband was then facing a charge for Criminal Breach of Trust under s. 409 Penal Code, had failed to keep her promise to the police to produce certain documents and cash relevant to the said charge, which items, according to what the respondent's husband told the police, were in the possession of the respondent.

The issue was whether the arrest and detention of the respondent under the circumstances was legal and hence whether the order as made by the Registrar aforesaid was proper.

Held:

[1] The arrest of the respondent was not effected in accordance with the total requirements of the law and the Registrar's order was correct and proper.

[2] Although it is not necessary for the police to show a *prima facie* proof that an offence is being committed, in order to effect a lawful arrest it is incumbent on them to show some lawful basis for the arrest and detention including a clear nexus between the suspect and the offence. The law does not allow any arrest based on the status of the respondent as the wife of a suspected criminal or on the anger of the police for her uncooperative attitude, however understandable the anger is.

[3] The entries in the police diary spelling out the proceedings in the investigation as required by s. 119(1) CPC, or a copy thereof, ought to be transmitted to the Magistrate or the Registrar when an application is made for the further detention of a suspect under s. 117 CPC. This the police did not do and such failure not only goes against the requirement of s. 117(1) but denies the Registrar the basis to ground her decision whether or not to continue the detention of the respondent. In this respect, as a matter of law, not only must the diary be in the form specified by s. 119 CPC but it must also be replete with grounds indicating that the information against the accused (respondent) is well-founded. Anything short of that is not acceptable.

[4] The facts also showed that the respondent was not informed of the true reasons for her arrest. As it is the law that any arrest without warrant requires the police to inform the person arrested of the true ground of arrest it must follow that the arrest herein cannot be lawful. It is also not clear whether the respondent knew of the general nature of the offence she was involved in at the time. This being the case, the third principle in *Christie & Anor. v. Leachinsky* [1942] 1 All ER 567 cannot apply and the requirement of informing the respondent of the reason for her arrest cannot be done away with.

[5] An offence under s. 409 of the Penal Code clearly is a seizable offence. By virtue of s. 23(1)(a) CPC it is manifest that the police do not have to obtain a warrant before they arrest any person whom they suspect has committed a seizable offence. This section however has to be read

with s. 108(3) of the Code which, together with s. 109 (1) and s. 110, seem to confine the exercise of such powers to " any police officer not below the rank of Sergeant". Hence, a Woman Corporal is not a wise choice to effect the arrest in question.

Per Curiam:

The practice of the Court to merely record the order it made on the copy of the "diary" and return that copy thereafter to the police when refusing to authorise the further remand of an accused person under s. 117 CPC is a bad practice and should not be encouraged. Each of such application instead should be registered in duplicate on the date it is filed and recorded in serial number and consecutively for each year. All Court records and documents e.g. diary transmitted and notes of proceedings in each case must remain and be maintained in the Court whether the Magistrate approves or disapproves the s. 117 application.

[Application for revision of Registrar's order refused].

Cases referred to:

Public Porosecutor v. Leonard [1960] 26 MLJ 13 ***(refd)***
Loo Fang Siang v. Ketua Polis Daerah Butterworth [1981] 2 MLJ 272 ***(refd)***
Jayaraman & Ors. v. Public Prosecutor [1982] 2 MLJ 273 ***(cit)***
PP v. Kok Khee [1963] 29 MLJ 362 ***(cit)***
Christie & Anor. v. Leachinsky [1947] 1 All ER 567 ***(refd)***
Abbassy v. Met. Police Comm [1990] 1WLR 385 ***(cit)***
Chapman v. DPP [1989] 89 Cr. App R 190 DC ***(cit)***
Kynaston v. DPP [1988] 87 Cr. App. R 200 DC ***(cit)***
Shaaban & Ors. v. Chong Fook Kam & Anor [1969] 2 MLJ 219 ***(foll)***
Hasim bin Saud v. Yahaya bin Hashim & Anor. [1977] 1 MLJ 259 ***(cit)***
Ramli Bin Salleh v. Inspector Yahya Bin Hashim [1973] 1 MLJ 54 ***(cit)***
Saul Hamid v. Public Prosecutor [1987] 2 MLJ 736 ***(refd)***
Saw Kim Hai & Anor. v. Reg [1956] 22 MLJ 21 ***(cit)***
Maja Anak Kus v. Public Prosecutor [1985] 1 MLJ 311 ***(cit)***
Ooi Phua v. OCCI Kedah / Perlis [1975] 2 MLJ 198 ***(refd)***

Legislation referred to:

Criminal Procedure Code, ss. 2(1), 15, 23(1), 58, 62, 63, 108(3), 109(1), 110, 111, 117(1), (2), (3), 119(1), (2), 323(1), Chapters XIII, XV, Second Schedule - Form XXVI
Evidence Act 1950, ss. 159, 160
Penal Code, s. 409

Other sources referred to:

Archbold Criminal Pleading, Evidence and Practice, 14th Edn., p. 1339
Magistrates' Court Handbook (published by the Malayan Law Journal), pp. 91, 92

For the applicant - Zainal Adzam bin Abdul Ghani, DPP
For the respondent - Yusuf Khan bin Ghows Khan; M/s. Yusuf Lee Pathma & Marbeck

JUDGMENT

Syed Ahmad Idid J:

Preliminary point

The respondent's Counsel raised an issue in respect of the aggrieved party i.e. the applicant. Was it the public prosecutor as stated in the "Usul"? The learned DPP conceded that the applicant should be the police with reference to s. 117 Criminal Procedure Code (CPC). Accordingly the correction is made.

Through "Notis Usul"

This application is for the revision of the order made by the Registrar of the Magistrates' Courts, which order released the respondent from police custody. The Registrar had, on 12 May 1994, stated that the arrest of the respondent was made without a warrant and that the suspect (or respondent here) was not told of the reasons for her detention.

The Public Prosecutor through the Deputy Public Prosecutor Encik Zainal Adzam bin Abdul Ghani, in his 18-page submission made streneous efforts to back the actions earlier taken by the police.

At this stage, the respondent is not tried nor has she been charged for any offence in a Court of law. The two issues here are (a) whether her "arrest" (or tangkapan) and "detention" by the police (or the Commercial Crime Investigation Division) purportedly made on 11 May 1994 at about 10.20 a.m. within the Kuala Lumpur Court precincts was legal and according to the law and (b) whether the Registrar's order was proper.

Perusing the affidavits filed by Inspector Nagendra Rao a/l Babojorow, ASP Latt Mazura bte Mansur and Woman Corporal Hamidah bte Abdul Rahman for the applicant and by the respondent herself, her husband Lim Chin Teik on 23 May 1994 and a corrective affidavit

on 30 May 1994, her Solicitor Lee Lim Huat and Lt. Col. Ahmad bin Daud who is presently doing practical training in a law firm, it is obvious certain divergence exists.

Finding of Facts

On 14 April 1994 the police received a complaint from Zalik Securities Sdn. Bhd. *vide* Jalan Bandar, Police Report No: 6191/94. An investigation was conducted and the police concluded that Lim Chin Teik (respondent's husband) had committed breach of trust of RM890,973.36 from Zalik where he worked as a Stock Broking Manager.

On 5 May 1994 respondent's husband was charged (under s. 409 Penal Code) *vide* Sessions Court 62-55-94. He pleaded not guilty and was released on bail of RM500,000.

Lim Chin Teik in his affidavit (para 19) told the police "my wife kept the share scripts and money". The respondent turned up at the Police Headquarters on 29 April 1994 and gave her word that she would surrender all share certificates including 35 lots Mulpha, 20 lots Mechmar, 48 lots MCB and 2 lots Public Bank and cash of RM70,000 but she did not do so. And she did not return to Bukit Aman thereafter.

On 11 May 1994 when the police met her at Block K13, police "arrested" ("menangkap") her. Police report No: Sentul 4311/94 was lodged by Hamidah bte Abdul Rahman.

The next day on 12 May 1994 Inspector Nagendra Rao submitted an application to continue detention of the respondent under s. 117 of the CPC. The application was made on police 51B meant as "Kertas Butir-butir Penyiasatan" but in reality this was turned into a letter addressed to the Magistrate in which the Inspector provided these two reasons:

(1) to recover certain assets and
(2) to question the respondent

and added that the respondent was believed to have destroyed all the share scripts.

It is to be noted that the police at that time neither suspected nor entertained any thoughts that the respondent was involved in the commission of any offence or crime. Learned DPP only in his submission in Court broached on the possibility ("mungkin") that respondent abetted her husband under s. 109 read with s. 409 of the Penal Code (PC) or that she dishonestly received stolen property (s. 411) or assisted in concealment of stolen property (s. 414). (Was appropriate action not taken under s. 62 (but perhaps not under s. 63) CPC?)

In so far as the respondent's husband (Lim Chin Teik) is concerned, s. 409 of the Penal Code under which he is charged spells out "Criminal breach of trust by public servant or by banker, merchant or agent" (punishable: imprisonment for up to 20 years and shall also be liable to fine). The article: Criminal Breach of Trust in [1994] 2 MLJ xcvii is instructive.

Can a suspect be arrested without a warrant?

According to the First Schedule of the Criminal Procedure Code the offender (and this must necessarily include a suspect) charged/chargeable under s. 409 PC may be arrested without warrant but a warrant shall ordinarily issue in the first instance. The offence is neither bailable nor compoundable. Anyone who abets the commission of any offence under the Penal Code may be arrested with or without warrant depending on the offence so abetted.

The First Schedule explains that its third column (whether the police may ordinarily arrest without warrant or not) is not intended in any way to restrict the powers of arrest without warrant which may be lawfully exercised by police officers, and I need add, only in fit and proper cases.

Is the offence of CBT under s. 409 siezable or non-siezable?

From what I have described above, such offence is siezable. That being so, it is a case in which a police officer may ordinarily arrest without warrant. By s. 109 CPC, any police officer not below the rank of sergeant may exercise all or any of the special powers in relation to police investigations. Where such officer has reason to suspect the commission of a siezable offence, he shall forthwith send a report of the same to the Public Prosecutor, whether or not he decides to investigate it himself or to deputise such duty.

Requirements of s. 117

Let me now go to Part V Chapter XIII of the CPC which deals with "Information to the police and their powers to investigate" within which s. 117 appears. (It was held in *Public*

Prosecutor v. Leornard [1960] 26 MLJ 13 that "... an **information** is a statement relating to the commission of an offence made to a police officer under s. 107 of the Code and a **complaint** is an allegation made to a Magistrate with a view of his taking action under Code" (also s. 2(1) CPC)

Section 117 requires that:

(a) where any person is arrested and detained;
(b) investigation cannot be completed within 24 hours;
(c) there are grounds for believing that the accusation or information is well founded;
(d) the police officer making the investigation must forthwith (i) transmit (to a Magistrate) a copy of the entries in the diary (hereinafter prescribed (See s. 119 CPC)) and (ii) at the same time produce the accused before such Magistrate.

In the present case, the information relating to the commission of the offence had been reduced into writing in accordance with s. 107 CPC when Report No. 6191/94 was lodged. (*Loo Fang Siang v. Ketua Polis Daerah, Butterworth* [1981] 2 MLJ 272 held that a police report under s. 107 is a "public document")

According to ASP Latt Mazura, "tingkah laku respondent yang tidak memberi kerjasama itu telah menimbulkan syak wasangka yang munasabah bahawa beliau telah bersubahat dengan suaminya Lim Chin Teik melakukan pecah amanah jenayah tersebut". Upon that, the police sprang into action against the wife, the respondent here. (A search without warrant is permitted but see s. 62 CPC. Utusan Malaysia 14 June 1994 news item "Bapa eksekutif ditahan untuk selesai kes"). It is to be noted however that this was only affirmed in the ASP's affidavit dated 18 May 1994 but not in the form of a diary which is envisaged by s. 117(1) CPC relating to the case being investigated.

The format of the diary

The diary, in my opinion, has to be a diary (definition: "buku catatan, buku harian") and in it must be set forth:

(a) the time at which the order, if any, for investigation reached the officer (and it is helpful to cite the substance of the order and where possible its objective);
(b) the time at which he (or she) began and closed the investigation (and the dates/times of occurrences activities);
(c) the place or places visited by him (or her); and
(d) a statement of the circumstances ascertained through his/her investigation.

These details provide the true **proceedings in the investigation** in compliance with what is required by s. 119(1) CPC. A copy of this is what the officer must supply the Magistrate under s. 117. This is to obviate the necessity of the Magistrate having to examine the complainant and recording the examination. (Chapter XV and s. 133. Compare ss. 117(3) with 135(2) CPC). So I have at this stage to say that the police in this case did not transmit to the Magistrate a copy of the proper entries in the diary. This goes against the requirements of s. 117. How then could the Magistrate (or Registrar in our case) make any decision to continue detention of the respondent? As a matter of law, not only must the diary be in the form specified by s. 119 CPC but it must also be replete with grounds indicating that the information against the accused (or respondent) is well-founded. It is incumbent upon the police to report to the Public Prosecutor of investigations under Chapter XIII CPC through the use of Form XXVI in Second Schedule. There was no evidence that this was done. Anything short of that again is not acceptable as otherwise the police will be on a frolic of their own and citizens and subjects (and foreigners) can be in grave danger of losing their liberty if not their limb. The Court must always be vigilant to guard against abuse of powers by any and every activity just so that our Nation continue to be respected for justice and fairplay.

Was the arrest legal

Even assuming that the police had prepared the diary correctly and had submitted the copy to the Magistrate, the other question which the Court had to satisfy itself was in respect of the arrest - was it legal? *Habeas Corpus* applications and cases have a tremendous wealth of information and legal principles which I need not delve into here. Suffice if the Public Prosecutor and the police refer to them for guidance.

Woman Constable Hamidah bt Abdul Rahman was cross-examined in Court. She admitted that she did not inform respondent of the

reasons for her arrest except to say that the arrest was in connection with report 6191/94. She added that she did not mention the offence. The interesting part was that she did not know what the report was about or when it was lodged or by whom. It was ASP Latt Mazura who instructed her to effect the arrest. In answer to several other questions she merely answered "tak concentrate", "tak dengar", "tak setuju". I sympathise with her as she was instructed to do something around which she was not privy. She is from cawangan whereas ASP Latt Mazura was from Pasukan C who had direct responsibility. At time when Hamidah attempted to effect the arrest (Whether or not there is an arrest is a question of fact. *Jayaraman & Ors. v. Public Prosecutor* [1982] 2 MLJ 273 at Held (4). See s. 15 CPC and *PP v. Kok Khee* [1963] 29 MLJ 362) of respondent, the "boss" who knew of the matter was DSP Tajuiddin who then "was inside his car and about to leave the Court". Lt. Col. Ahmad bin Daud who is "an officer and a gentleman" of the Army Legal Branch averred that Hamidah, when asked the reason for the arrest replied "It is up to you to ask boss" (i.e. Tajuiddin). The Colonel also gave evidence in Court but the DPP did not cross-examine him at all. By *Christie & Anor v. Leachinsky* [1947] 1 All ER 567, any arrest without warrant requires the policeman (or policewoman) to "inform the person arrested of the true ground of arrest". I need add here that by article 5(3) of our Federal Constitution any person who is arrested must ("shall") be informed as soon as may be of the grounds of his arrest (See **Archbold Criminal Pleading, Evidence and Practice,** 14th Edn., p. 1339 regarding arrests. Ordinary language is sufficient Telfer [1976] Crim. LR 562. See also ***Abbassy v. Met. Police Comm.*** [1990] 1 WLR 385). From the evidence before this Court, this was not done in today's case.

Could the police have arrested the respondent?

Yusuf Khan bin Ghows Khan Esq. of Counsel for the respondent argued that by s. 23(1) CPC the respondent should not have been arrested as her name or that of her husband was not mentioned in the report and that the grounds of her arrest must relate to an offence. It was respondent who chided that "if indeed I had been uncooperative...failed to turn up for questioning...police are at liberty to obtain a Warrant of Arrest against me under s. 111 CPC". This is true only to the extent where the police had issued an order in writing for her attendance and she refused in which case such refusal will then be reported to a Magistrate who may issue a warrant.

As I have indicated above, in cases where the offence is seizable then anyone against whom a reasonable complaint has been made or **credible information has been received** or **even where reasonable suspicion exists** can be arrested without any order from a Magistrate or without any warrant: s. 23(1)(a). From the above, it is manifest that the police do not have to obtain a warrant before they arrest any person (citizen or foreigner) whom they suspect has committed a seizable offence. ASP Latt Mazura could have effected the arrest herself or sent a deputy to do so provided the rank of the deputy does not transgress s. 108(3) of the CPC **and provided further she had good and sufficient grounds**. **(**e.g. if the ASP had acted as provided under s. 51 CPC. See s. 105 CPS but arrest must be properly done. See *Chapman v. DPP* [1989] 89 Cr. App. R 190 DC and *Kynaston v. DPP* [1988] 87 Cr. App. R 200 DC).

Obviously the W/Cpl was not a wise choice under these circumstances. Sections 108(3), 109(1), 110 CPC seem to confine the exercise of powers to "Any police officer not below the rank of Sergeant .... " In this respect if there was credible information or reasonable suspicion against the respondent of an offence which is seizable, then obviously the law allows the police to arrest. But I am unable to agree that the law allows any arrest based on her status as wife or anger of the police merely because the respondent did not cooperate. Most people may understand the anger that was built up but the police must calmly appreciate that in the final analysis their success against crime can only be the results of gathering relevant intelligence, the proper exercise of their mental faculty and powers of deduction and making sound decisions in time. There must always be some lawful basis for arrest and detention including a clear *nexus* between the suspect and the offence.

Legal Principles

I agree with the Privy Council's judgment in *Shaaban & Ors. v. Chong Fook Kam & Anor.* [1969] 2 MLJ 219 that "... it is unnecessary for the police to show there was *prima facie* proof

of the offence". This is supported by the Criminal Procedure Code which allows up to 15 days after arrest for investigation. I am of the opinion that at s. 117 stage it is sufficient for the Court to extend the detention of the accused, provided the entries in the diary (which I have described above) or a copy as described in s. 119 CPC is transmitted to the Court. (see *Hashim bin Saud v. Yahaya bin Hasim & Anor.* [1977] 1 MLJ 259. Was it the same police Inspector who was involved in *Ramli bin Salleh v. Inspector Yahya bin Hashim* [1973] 1 MLJ 54).

I am inclined towards the observation in the **Magistrates' Court Handbook** (published by the Malayan Law Journal) at pages 91, 92 that:

> Very real problems and conflicts arise in situations where the prosecution comes before the Court wishing to remand a suspect to enable them to complete their investigations. In such instances the Magistrate should be well-reminded to ensure that an accused is not remanded and refused bail simply to give him a taste of imprisonment in advance of his trial or to achieve what may be termed 'de facto' imprisonment to teach him a lesson so to speak.

and for this reason the CPC at s. 117(3) requires the Magistrate to record his reasons.

It is not disputed that the Registrar when exercising her powers under s. 117 did so as an inferior Criminal Court (s. 323(1) CPC) nor that Counsel was excluded from the remand proceedings. See *Saul Hamid v. Public Prosecutor* [1987] 2 MLJ 736. In fact Edgar Joseph Jr. J. (as His Lordship then was) at page 739 said:

> As for the risk of premature disclosure to the defence it is obvious that under s. 117, a Magistrate may, on the mere perusal of the entries in the police diary relating to the case, authorise the detention of the arrested person in custody for a term not exceeding 15 days in the whole. (Syed Agil Barakbah J. in *Ramli bin Salleh v. Inspector Yahya bin Hashim* [1973] 1 MLJ 55 cautioned Magistrates that they should not allow the full period as a matter of course but should weigh the seriouness of the offence and determine whether a shotrter period should be sufficient to enable police to complete the investigation.) Moreover, the arrested person cannot call for or inspect the diary unless the police officer concerned refers to it for purposes of ss. 159 or 160 of the Evidence Act 1950, in which case, only such parts of it as are referred to shall be shown to the arrested person: s. 119. (See *Gun Kim Luu v. Public Prosecutor* [1961] 27 MLJ 35. See also s. 119(2) CPC). Consequently, subject to the very limited exceptions mentioned, neither the arrested person nor his Counsel (if present) would have any means of knowing of the entries in the diary unless, of course, the Magistrate or the police officer makes disclosure thereof during the proceedings - events I would regard as most unlikely.

The learned DPP urged the Court that under the law, "when an accused person is before Court, the Court has jurisdiction to try him notwithstanding the fact that his arrest may have been illegal" - *Saw Kim Hai & Anor v. Reg* [1956] 22 MLJ 21 was cited. This does not appear to be applicable as the Registrar was not "trying" the respondent at the time. Section 117(2) CPC. See also *Maja Anak Kus v. Public Prosecutor* [1985] 1 MLJ 311.

Factors for consideration before arrest

The actions taken in this case reflect poorly on the officials who should know better the proper execution of their duties in a professional manner.

It is true that:

> The interest of justice is as important as the interest of arrested persons and it is well-known that criminal elements are deterred most of all by the certainty of detection, arrest and punishment.

per Suffian, LP in *Ooi Phua v. OCCI Kedah/Perlis* [1975] 2 MLJ 198.

I am in agreement with the learned DPP that the third principle in *Christie & Anor. v. Leachinsky* [1942] 1 All ER 567 is that:

> The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.

The learned DPP sought to advance these reasons e.g. the respondent knew of her husband's arrest and charge in Court, her visit to the police headquarters in the same connection to recover/discover share scripts and cash, and her avoidance of the police thereafter with the view of proving that the police action was legal thereunder. If indeed it was all that simple then why was it so hard for the authori-

ties to first inform the respondent of the reasons? As can be seen from the evidence, the arresting officer did not know of the reasons.

It is not clear whether she knew of the general nature of the offence she (not her husband) was involved in at the time. It is a travesty of justice to allow a deficient arrest to be converted into one of respectability and legality.

Observations

The learned DPP kindly explained that only applications under s. 117 which the Court approves are registered and filed in the Court records. Where, however, the Court declined or refused to authorise the further remand of the accused the Court merely recorded the order on the copy of the "diary" and returned that copy to the police.

This is bad practice and should not be encouraged to continue. Henceforth each application in duplicate should be registered on the date it is filed and recorded in serial number (e.g. one file for one police district or police station, depending on its size and the frequuency of application) and consecutively for each year. All Courts records and documents e.g. diary transmitted and notes of proceedings in each case must remain and be maintaned in the Court whether the Court (Magistrate or Registrar) approves the s. 117 application or disapproves and rejects. It shall be the duty of the police officer(s) to report back to the Magistrate the date and time the accused (or remanded) person is released or granted bail on the form specified in the registrar's circular no. 1 of 1979 a copy of which had been distributed to the Ketua Polis Negara all Sessions and Magistrates' Courts, District Officers, Senior Assistant Registrars and DPPs. Sadly, this circular seems to be more honoured by its non-observance. Nevertheless, the Magistrate should KIV his file to relevant date of each order and if the release order is not received from the OCPD the Magistrate must inquire into the matter. Furthermore, the Magistrate must send up a monthly return of all such orders and inquiries to the High Court Judge. (Can s. 58 CPC then come into operation?)

Conclusion

Taking into consideration the actions and principles of law applicable in this case, I am of the opinion that the arrest of the respondent was not effected in accordance with the total requirements of law and that the Registrar's order was correct and proper as the police failed or neglected to provide a copy of the diary specified under the Criminal Procedure Code.

I therefore see no necessity to revise that order.